

Emergency Rules

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 35—Children's Division Chapter 80—Payment of Residential Facilities

EMERGENCY RULE

13 CSR 35-80.010 Residential Foster Care Maintenance Methodology

PURPOSE: This rule establishes a methodology for determination of the costs associated with the provision of foster care maintenance based on the statutory criteria contained in 42 U.S.C. 672/675(4)(A) and related rates for residential care agencies.

EMERGENCY STATEMENT: The division has determined that an emergency rule is necessary to establish a methodology for foster care maintenance payments to residential facilities. The United States District Court for the Western District (Central Division) has declared that the current methodology for determining foster care maintenance payments is not based on the statutory criteria in 42 U.S.C. 672/675(4)(A) and therefore in violation of federal law. The division has been enjoined from using the current methodology. The division finds that an immediate danger to the health, safety and welfare to the citizens of Missouri exists inasmuch as this action is necessary in order to obtain necessary cost data for determination of foster care maintenance payments and to ensure federal funding for the affected providers. The division finds that this emergency rule is necessary to preserve a compelling governmental interest in maintaining continued federal funding for the treatment of children. The scope of this emergency rule is limited to circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The division believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed on January 16, 2004, effective January 26, 2004, and expires July 23, 2004.

(1) Objectives. This rule establishes a methodology for determination of the costs associated with the provision of foster care maintenance based on the statutory criteria contained in 42 U.S.C. 672.675(4)(A) and related rates for residential care agencies.

(2) General Principles.

(A) Four (4) child-specific foster care maintenance rates shall be determined in accordance with section (3) Residential Foster Care Maintenance Rate Methodology.

(B) Residential child caring agencies will be required to complete a cost report detailing their most recent fiscal year's operating costs. Providers must also submit audited financial statements with their report for verification purposes.

(C) Foster care maintenance costs shall be obtained from residential care providers using the standard cost report completed in accordance with applicable instructions.

1. In order to be considered "Foster Care Maintenance," agency costs shall first meet the general definition as ascribed within federal regulation, accompanying clarification or audit finding and be allowable as defined within OMB Circular A-122, OMB Circular A-87, and the Child Welfare Policy Manual.

2. Reported agency costs shall be reasonable in nature as defined with OMB Circular A-122 and OMB Circular A-87.

3. Cost must be appropriately allocated to all benefiting programs or services offered by an agency.

4. The calculation of the foster care maintenance rate must consider any applicable credits or payments received either directly from federal or state funding sources or indirectly via contracted services or reimbursement.

(D) Statewide foster care maintenance costs shall be rebased every three (3) years.

(E) The Department of Social Services (DSS) will submit budget items for the General Assembly's consideration to revise rates in accordance with the results of the rate setting methodology. Rates will be adjusted in accordance with the Truly Agreed and Finally Passed appropriation by the General Assembly subject to veto by the Governor.

(3) Residential Foster Care Maintenance Rate Methodology. The foster care maintenance rate will contain two (2) separate components. A statewide average room and board component and a child-specific daily supervision component.

(A) Room and Board Component.

1. Because the general cost of providing room and board will not vary based on a child's identified level of care or other programmatic considerations, a core, statewide, board rate will be calculated based on the average cost of all agencies providing such services.

2. The room and board component will be calculated by dividing the total net applicable room and board related costs for all agencies by the statewide total days of residential child caring services provided.

(B) Daily Supervision Component.

1. The daily supervision component will vary based upon required staffing ratios as defined within the *Missouri Code of State Regulations* "Rules of Department of Social Services, Division 40—Division of Family Services, Chapter 71—Licensing Rules for Residential Care Agencies." This document establishes basic expectations for staff/child ratios within residential care agencies as identified within Exhibit 1, *Residential Child Care Agency Staff/Child Ratios*.

Exhibit 1

Category	Age	Child Awake	Child Asleep
Basic Core Requirements	Birth – 6	1:4	1:6 (staff awake)
	6 – 8	1:6	
	8 – 21	1:10	
	7 – 21		1:12 (staff asleep) 1:20 (staff awake)
Infant/Toddler /Preschool	Birth – 6	1:4	1:6 (staff awake)
Residential Treatment (DFS Levels II & III)	6	1:4	1:6 (staff awake)
	7	1:6	1:6 (staff awake)
	8 – 21	1:8	1:16 (staff awake)
Intensive Residential Care (DFS Level IV)	6	1:4	1:6 (staff awake)
	7–21	1:6	1:6 (staff awake)

2. Agencies will report days by type of service provided. To determine the child-specific daily supervision portion of the rate, agencies will be classified into one (1) of four (4) categories based upon the average level of supervision required by children in their care. This classification will allow for adequate differentiation of cost incurred in the provision of daily supervision across each category and permit calculation of the related rate component. After categorization of agencies into each of the defined categories, the daily supervision rate will be calculated by dividing the total net applicable supervision costs for all agencies within a category by the total days of child caring services provided by those agencies.

A. Days of service provided under the basic core requirements regardless of payor source. Examples of services under this category reimbursed by DSS include the following categories:

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- (I) Emergency shelter;
- (II) Emergency crisis intervention;
- (III) Maternity care; and
- (IV) Maternity care with infant.

B. Days of service provided under the infant/toddler/preschool requirements regardless of payor source. Examples of services under this category reimbursed by DSS include the following contract categories:

- (I) Infant care; and
- (II) Toddler care.

C. Days of service provided under residential treatment requirements regardless of payor source. Examples of services under this category reimbursed by DSS include the following contract categories:

- (I) Moderate need (Level II);
- (II) Severe need (Level III); and
- (III) Family focused residential services.

D. Days of services provided under intensive residential care requirements regardless of payor source. Examples of services under this category reimbursed by DSS include the following contract categories:

- (I) Intensive need (Level IV).

(4) Inflation/Trend Factor Adjustments.

(A) For the purpose of establishing base year costs, the room and board component will be adjusted based on the change in the USDA Expenditures on Children by Families. For State Fiscal Year 2004, this amount would be two and seventy-five one-hundredths percent (2.75%). The child-specific daily supervision component will be adjusted by the percentage COLA (cost of living adjustment) provided to state employees. For State Fiscal Year 2004, this amount would be one and thirty-five one-hundredths percent (1.35%).

(B) For the purpose of interim inflation/ trend factor adjustments until rates are rebased, the department will submit budget items for the General Assembly's consideration to revise rates in accordance with the results of the rate setting methodology. Rates will be adjusted in accordance with the Truly Agreed and Finally Passed appropriation by the General Assembly subject to veto by the Governor.

*AUTHORITY: section 207.020, RSMo 2000. Emergency rule filed Jan. 16, 2004, effective Jan. 26, 2004, expires July 23, 2004. An emergency and proposed rule covering this same material will be published in the Feb. 17, 2004 issue of the **Missouri Register**.*